

REMARKS

Claims 1-17 stand rejected under sect. 102. In this amendment, claims 1, 3, 4, 7, 12 and 17 are amended, new claims 18 and 19 added and claim 2 cancelled. Claim 1 has been amended to include the limitations of original claim 2, plus additional limitations. Claim 17 also has had new limitations added. These amendments and new claims 18 and 19, are supported, for example, by Fig. 7 and the specification at least at paras. [0119] –[0132]. No new matter is added. The remaining amendments are simply to correct claim dependencies.

The rejection of the claims as anticipated by either of the cited Fischel patents is respectfully traversed. Claim 1 as amended recites, inter alia, that the hollow spindle includes a tube-like structure extending into the rotating porous cylindrical wall with a spindle outlet located therein. No such structure is disclosed in the cited references. In particular, Fig. 11 of Fischel '462 which is heavily relied upon by the Examiner does not even show that the pins on which the central member rotates are hollow. Nevertheless, there is no structure disclosed as now recited in claim 1.

Independent claim 17 has also been amended to further recite the pressure differential and pumps as disclosed in the instant application. While the Examiner alleges that a pressure differential as previously claimed existed, despite the fact that the reference described it in a different location, the references do not at all disclose a pump used in combination with the other elements. Claim 17 is therefore patentable for this reason.

In view of the patentability of the two independent claims, the other claims are also patentable. However, separate and distinct reasons for patentability also exist for the dependent claims. In general, the Examiner has made sweeping assertions that details of a medical device for cell separation as disclosed in the cited references inherently may be used for industrial slurry separation such as separation of solid components in municipal sewage sludge (MSS). There is absolutely no basis in the cited references for such an unlikely crossover use and the Examiner's unsupported assertions of such cannot be the basis for a sustainable rejection. For example, claims 10-16 recite specific parameters of the invention as intended for industrial applications as described. The Examiner, being unable to find specific structure to meet these limitations, makes unsupported references to possible undisclosed uses of the prior art devices. At best the


Examiner is arguing an obviousness basis for rejection, not an anticipation as rejected. But even so, there is no suggestion in the references cited for the asserted uses or design changes. These dependent claims are therefore further patentable for these additional reasons.

CONCLUSION

In view of the foregoing amendments and remarks, it is believed that the application as a whole is in form for allowance. Should the Examiner have any continuing objections, the Applicants respectfully ask the Examiner to contact the undersigned at 415-442-1106 in order to expedite allowance of the case. Authorization is granted to charge any outstanding fees due at this time for the continued prosecution of this matter to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0310 (matter no. 061136-0013).

Respectfully submitted,

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